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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8
9 Michael Bonda,

No. CV-22-00227-TUC-RM

10 Plaintiff,

ORDER

11 v.

12 Michael Eugene Martinez, Jr., et al.,

13 Defendants.

14
15 On March 7, 2023, Plaintiff filed an Application for Entry of Default Against
16 Defendant Michael Eugene Martinez, Jr. (Doc. 27.) On April 25, 2023, the Clerk
17 entered default against Defendant Martinez pursuant to Rule 55(a) of the Federal Rules of
18 Civil Procedure. (Doc. 28.) To date, Plaintiff has not taken any further action in this
19 case.

20 A plaintiff has the general duty to prosecute this case. *Fidelity Phila. Trust Co. v.*
21 *Pioche Mines Consol., Inc.*, 587 F.2d 27, 29 (9th Cir. 1978). The Court has the power to
22 dismiss an action for failure to prosecute, either under Rule 41(b) of the Federal Rules of
23 Civil Procedure, Local Rule 41.1, or pursuant to its inherent authority. *See* Fed. R. Civ.
24 P. 41(b) (action may be dismissed if plaintiff fails to prosecute); LRCiv 41.1 (“cases
25 which have had neither proceedings nor pleadings, notices, or other documents filed for
26 six (6) or more months may be dismissed by the Court for want of prosecution”); *Link v.*
27 *Wabash R.R. Co.*, 370 U.S. 626, 630-31 (1962) (“The authority of a court to dismiss sua
28 sponte for lack of prosecution has generally been considered an ‘inherent power,’

1 governed . . . by the control necessarily vested in courts to manage their own affairs so as
2 to achieve the orderly and expeditious disposition of cases.”); *Pearson v. Dennison*, 353
3 F.2d 24, 28 (9th Cir. 1965) (“A court has power to dismiss an action for want of
4 prosecution on its own motion, both under Rule 41(b) and under its local rule . . . and
5 even in the absence of such rules.”). In determining whether to dismiss a case for lack of
6 prosecution, the Court must weigh five factors: ““(1) the public’s interest in expeditious
7 resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice
8 to the defendants; (4) the public policy favoring disposition of cases on their merits and
9 (5) the availability of less drastic sanctions.”” *Carey v. King*, 856 F.2d 1439, 1440 (9th
10 Cir. 1988) (per curiam) (quoting *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir.
11 1986)).

12 Accordingly,

13 **IT IS ORDERED** that within **thirty (30) days** of the date this Order is filed,
14 Plaintiff shall show cause why this action should not be dismissed for failure to prosecute
15 pursuant to Rule 41(b) of the Federal Rules of Civil Procedure and LRCiv 41.1.

16 Dated this 17th day of November, 2023.

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Honorable Rosemary Márquez
United States District Judge